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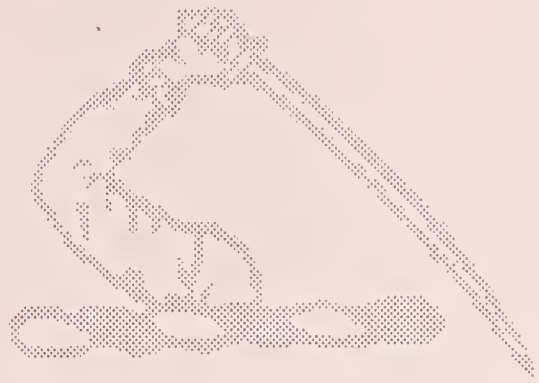

Who's Minding the Store?

A Plan to Reform the Weights and Measures System in Massachusetts

A Report of the
Senate Committee on Post Audit and Oversight
December 1996

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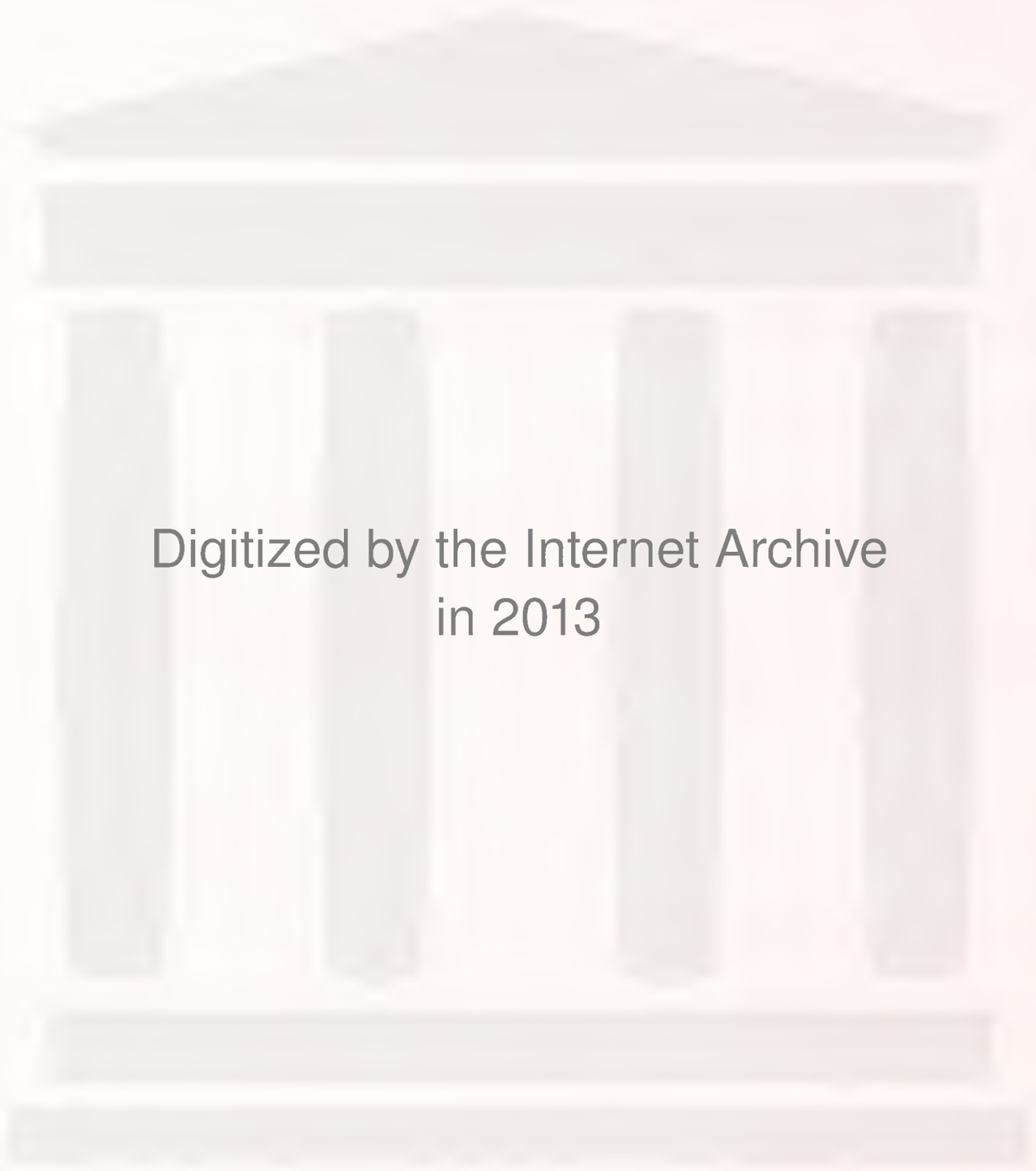

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"A false balance is an abomination to the Lord,
but a just weight is his delight."
Proverbs 11:1

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Executive Summary

When you purchase a pound of apples, buy a gallon of gasoline, order a cord of firewood, ride downtown in a taxi, or have 100 gallons of heating oil delivered to your home, you are relying on the accuracy of a weighing or measuring device to ensure that you get what you pay for. When you pick up a loaf of bread and a gallon of milk at your local supermarket, you are often relying on the accuracy of a checkout scanner to ensure that you are not overcharged. In any of these situations, you are relying on the proper enforcement of Weights and Measures laws to provide an honest marketplace.

Merchants also depend on Weights and Measures laws to provide a level playing field for commerce. Retailers should be able to trust that the laws and procedures their stores must follow are enforced uniformly across the state, and that enforcement is not lopsided, benefiting one company above others.

However, recent research shows that Massachusetts cannot take for granted Weights and Measure enforcement for consumers or uniformity of regulation for merchants.

- Massachusetts ranked last among the seven states that participated in a recent survey of scanner accuracy for the Federal Trade Commission. Over 7.5 percent of the items rung up at a checkout counter in Massachusetts were wrong. This error rate underlines the fact that Massachusetts does not require scanners to be tested regularly for accuracy.

- Unlike some other states, consumers in Massachusetts lack a viable mechanism to seek immediate remedies when they are overcharged by a checkout scanner.

- Weights and Measures enforcement in Massachusetts is a patchwork of state and local programs which generally lack the resources and the trained personnel to effectively carry out enforcement efforts. Some cities and towns invest in Weights and Measures efforts, and reap a reward of savings for consumers, but most, unfortunately, fill part-time positions with individuals who are not provided the training or the equipment to do the job right.

- Weights and Measures inspectors are not required to be licensed in Massachusetts, and there is no requirement for continuing education to keep updated in the field.

- Under current law, local inspectors must pursue violations of Weights and Measures laws through the criminal courts. Due to court overcrowding with more serious crimes, and the cost of pursuing criminal charges, few enforcement actions are initiated. As a result, violators often face no consequences for their actions. While the Division of Standards, the state agency responsible for Weights and Measures

enforcement primarily in towns with less than 5,000 people, makes some use of administrative fines, local jurisdictions must use the cumbersome and over-burdened court system.

- Equipment necessary to conduct modern Weights and Measures enforcement is unavailable to almost all inspectors.

- Because local inspectors charge an accuracy certification (sealing) fee and state inspectors do not, some merchants must pay an annual sealing fee while others, inspected by the Division of Standards, pay nothing.

- Local inspectors are not authorized to check for violations in the state item pricing law, which requires most items in a food store to be individually marked for price.

- The current record-keeping format is woefully outdated. In addition, one-third of Massachusetts cities and towns failed to submit an annual report on their Weights and Measures programs last year, as required by law.

- Finally, resources have been drained from the state Weights and Measures program at the Division of Standards: the Division's budget has dropped from $726,000 in Fiscal Year 1987 to $462,000 in Fiscal Year 1996, and there are now only five inspectors available to conduct inspections in 123 towns in Massachusetts.

Who's minding the store?

Massachusetts does not have to accept this patchwork of often ineffective Weights and Measures programs. Some towns within Massachusetts and other states have decided to invest the effort and resources necessary to develop model Weights and Measures enforcement programs. The record shows that enforcement works.

The town of Barnstable aggressively enforces Weights and Measures laws, and the impact has been dramatic. In 1995, because of local enforcement, consumers in Barnstable saved more than $360,000 that would have been lost due to inaccurate scales, gasoline pumps, fuel truck meters and net weight of store-packaged products.

On the opposite coast, the city of Seattle, Washington began an enhanced Weights and Measures enforcement program in 1994 that included periodic tests of checkout scanners at all retail outlets. Within two years, error rates on retail scanners plunged by 75 percent.

Massachusetts must show the same willingness to lead. The Senate Committee on Post Audit and Oversight believes that there is a reasonable program of action that can effectively reform Weights and Measures laws and enforcement in Massachusetts. Recommendations are grouped into three categories: consumer protection initiatives, uniform enforcement and streamlined operations, and resources.

Consumer Protection Initiatives

- An annual scanner accuracy test should be required in addition to maintaining the annual testing requirements for all other Weights and Measures devices, such as supermarket scales and gasoline pumps.

- A Consumer Bounty program should be established that provides an immediate remedy to consumers who are overcharged by inaccurate scanners. Consumers should be entitled to ten times the difference in price, with a minimum recovery of $1.00 per item and a maximum recovery of $5.00 per item. If the seller refuses to pay the bounty, the consumer should be empowered to go to court to recover damages up to $250.00 per violation plus attorney's fees. Bounties will effectively deputize Massachusetts citizens as inspectors to ensure an honest marketplace.

- The Division of Standards should compile and publish an annual list of the state's twenty worst performers for scanner accuracy.

- Retail stores should make a concerted effort to provide information to consumers on whom to contact if they have been subject to Weights and Measures violations.

- The retail industry should take the initiative to improve its scanner accuracy rates through the adoption of a self-monitoring price verification program.

Uniform Enforcement and Streamlined Operations

- Communities with populations between 5,000 and 20,000 should retain the option of keeping their current Weights and Measures program. Alternately, these communities should be able to contract with the Division of Standards to provide Weights and Measures enforcement within their jurisdictions.

- All Weights and Measures inspectors should be required to pass a licensing test administered by the Division of Standards and complete annual continuing education requirements.

- Administrative civil fines, commonly known as "parking ticket" fines, should replace use of the criminal courts for Weights and Measures violations.

- The Division of Standards should develop a model plan for regionalism that would pool the resources of local Weights and Measures programs, allowing them to purchase or lease modern enforcement equipment on a more cost-effective basis.

- The law should be changed to directly grant local inspectors the authority to conduct item pricing inspections and issue administrative fines, and the unit pricing law

should be changed to allow for administrative fines by both state and local inspectors.

- The Division of Standards should revise annual reporting requirements to better reflect modern Weights and Measures enforcement standards.

Resources

- Massachusetts should increase the resources available for Weights and Measures enforcement through the establishment of a Consumer and Merchant Protection Trust Fund.

- Revenue sources for the Consumer and Merchant Protection Trust Fund should include sealing fees, item and unit pricing fines, fines for improper use of devices, and funds generated from contracted services purchased from the Division of Standards.

- Resources raised through the Consumer and Merchant Protection Trust Fund should be expended for enhancement of Weights and Measures Enforcement on a state-wide level, including equipment purchases, grants to local communities, and training of state and local inspectors.

I. History of Weights and Measures

The importance of just Weights and Measures dates to biblical times. The Bible proscribes dishonest weighing and measuring. For example, Leviticus 19:35 states, "You shall do no wrong in judgment, in measures of length or weight or quantity." Proverbs 11:1 declares, "A false balance is abomination to the Lord: but a just weight is his delight."[1]

In the past, the Commonwealth recognized the critical role that a thorough program of Weights and Measures regulation and enforcement serves in providing consumer protection and a level playing field for business. As early as 1821, President John Quincy Adams, a Massachusetts native, highlighted the importance of Weights and Measures in a report to the U.S. Senate:

> "Weights and Measures may be ranked among the necessaries of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; ...to every transaction of trade and commerce . . . The knowledge of them, as in established use, is among the first elements of education . . . This knowledge is riveted in the memory by the habitual application of it to the employments of men throughout life."[2]

As early as 1631, the Governor of Massachusetts was given responsibility for certifying Weights and Measures. In this capacity, the Governor was the ultimate guarantor that a pound was a pound and that scales were accurate. Since Massachusetts was heavily dependent on trade, accurate Weights and Measures were central to the economy.

On a national level, the Commonwealth led major Weights and Measures developments, including participation in the creation of the National Conference on Weights and Measures in the 1890s, which is responsible for creating Weights and Measures policies. The Division of Standards, organized in 1919, oversees the enforcement of Weights and Measures laws in Massachusetts.

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[1] Weights and Measures Week Guide. National Conference on Weights and Measures. June 1989. Page 11.

[2] John Quincy Adams. Excerpt from the Report on Weights and Measures by the Secretary of State, made to the Senate on February 22, 1821.

II. Weights and Measures Enforcement in Massachusetts

What is a Weights and Measures Enforcement Program?

A Weights and Measures enforcement program seeks to ensure the accuracy of all weighing and measuring devices that are used to conduct commercial transactions. There are numerous scales and measuring devices that are tested for accuracy and sealed by a Weights and Measures inspector. Several categories of enforcement form the core duties of a Weights and Measures inspector:

Weighing or Measuring Device Accuracy Tests (Sealing)
A large portion of the activities of a Weights and Measures inspector consists of checking scales and other devices for accuracy, such as taxi and fuel oil truck meters. Using certified weighing tools, the inspector conducts certain tests on a device to determine if that device falls within acceptable tolerances. If the device passes the test it receives a seal signed by the inspector, and can legally be used during the next year for commercial transactions. Under state law, every weighing or measuring device must be tested and sealed annually.

Gasoline Pump Tests, including Octane Confirmation
In order to measure whether a gallon of gasoline is actually a gallon of gasoline, inspectors use a gasoline "prover" to measure the accuracy of gasoline pumps. In most communities, a five gallon hand-held container serves as a simple prover. Several communities, as well as the Division of Standards, have $70,000 gas-testing trucks to improve the safety and efficiency of tests. In addition, gasoline octane levels are tested to measure whether they are misrepresented at the pump. Such tests are expensive and must be conducted by private testing firms because the state's motor fuel lab was closed several years ago. The Division of Standards recently acquired a hand held octane tester that can give approximate readings, but the measurements are not admissible in court.

Scanner Accuracy Tests
Inspectors conduct tests in retail stores to determine the accuracy of bar code reading scanners. Using standard test methods that adhere to a random sampling procedure, inspectors determine if the price that scans at checkout matches the price on the item and the price on the shelf. There are currently no requirements that all scanners be subject to an annual scanner accuracy test.

Net Weight Tests
Weights and Measures inspectors conduct net weight tests in retail stores on store-

packaged items to determine if the net weight of the item matches the weight on the price tag, and to determine if any and all packaging materials have been properly deducted from the net weight of the item. Examples of such items include meat, store-packaged fruits and vegetables, and potato salads. There is no requirement that the Division or local jurisdictions conduct net weight testing. Violations must be brought to the attention of the Attorney General for action under the Consumer Protection Act, Chapter 93-A of the Massachusetts General Laws.

Measuring Compliance with Unit and Item Pricing Laws

Inspectors from the Division of Standards are currently the sole Weights and Measures officials who conduct unit and item pricing inspections throughout the state. The item pricing law (Massachusetts General Laws, Ch. 94, Sec. 184C) requires that all items in a food store, and every grocery item in a food department, with certain exceptions, be individually marked with a price. The Weights and Measures inspector will inspect the store to determine if all required items have prices and also to check the lists of exempted items (including bulk items, eggs, milk) maintained by the store.

Using a prescribed test procedure, the inspector will issue a fine of $100.00 per violation for non-priced items, allowing for certain tolerances. The maximum fine per inspection is $2,500.00. Stores that offer and voluntarily comply with the price accuracy guarantee program, where consumers are entitled to an item free if it is rung up at a higher price than the lowest marked price, have their item pricing violation fines reduced by 50 percent (Massachusetts General Laws, Chapter 94, Sec. 184E).

The unit pricing law (Massachusetts General Laws, Ch. 6, Sec. 115A) requires that grocery shelves clearly indicate what the price per unit (per pound, ounce, quart, gallon, etc.) is for each item and requires that the unit price tag be orange in color. Unit pricing violations currently have to be pursued through criminal court proceedings, and are punishable by a fine of $10.00 to $50.00 for a first offense and a fine of $25.00 to $100.00 for subsequent offenses.

Heating Oil Truck Meter Tests and Oil Delivery Inspections

In order to test heating fuel delivery truck meters, a two hundred gallon oil prover is required. This test consists of filling the prover with oil and measuring whether the accuracy of the meter falls within acceptable tolerances. These provers are expensive and very few communities have such a piece of equipment. In addition, inspections of actual fuel deliveries in the field do not occur frequently enough in all cities and towns.[3]

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[3] Post Audit and Oversight Bureau. Field research. August 1996.

Oil Delivery Scams Leave Consumers Cold

Few cities and towns in Massachusetts monitor fuel deliveries in the field, checking to make sure that delivery tickets are accurate. This is important work. In Vermont, for example, the now-defunct Augsbury Oil Co. used pre-printed delivery tickets to systematically short customers on oil deliveries. Over a three year period, customers were dishonestly billed for over $415,000 in heating oil.

Where Are We Now: Responsibilities for the Division of Standards

The Division of Standards has primary responsibility in the area of Weights and Measures administration in the Commonwealth of Massachusetts. These activities relate to the sale of food, fuel, and other items sold on the basis of weight or measure.

These responsibilities include the following:

- Annually inspecting, testing, and sealing all measuring devices within its jurisdiction. This includes 123 towns in Massachusetts with a population less than 5,000 people.

- Overseeing the execution of Weights and Measures operations among the state's 228 cities and towns with populations of more than 5,000 people that have appointed local inspectors.

- Inspecting retailers statewide who sell groceries for compliance with the unit pricing and item pricing laws. In addition, only the Division can enforce the item pricing law by levying immediate fines on violators ("parking ticket" fines).

- Randomly testing the accuracy of net weight markings on store-packaged goods in supermarkets such as potato salad or hamburger.

- Testing the accuracy of electronic retail scanners.

- Maintaining compliance with federal weights and measures standards established by the National Institute of Standards and Technology.

Of these responsibilities, only annual testing and sealing of measuring devices is mandated by state law. All other responsibilities are conducted subject to the availability of inspection resources. Also, unlike cities and towns, the Division of

Standards does not charge a fee for sealing weighing and measuring devices.

Since 1986, the Division has seen its duties increased while at the same time experiencing significant staff and budget reductions. Since 1986, the item price law was enacted, and the Division assumed responsibility for licensing auctioneers and registering automobile repair shops. In addition, weighing and measuring devices have greatly increased in sophistication during that time, and retail checkout scanners have proliferated in number.

During this time of change, the Division saw its staff drop from 23 in Fiscal Year 1987 to 14 in Fiscal Year 1996, with the number of inspectors falling from 14 to its current 5 inspectors.[4] With the decline in the number of inspectors, it is difficult for the Division to perform much beyond the statutory requirement of testing and sealing all devices in their jurisdiction.

Enforcement Matters in Maryland

Weights and Measures enforcement matters to consumers because inaccurate weighing, measuring, and scanning devices are common. Maryland maintains one of the best enforcement programs in the country, according to officials at the National Institute for Standards and Technology. Despite their model program, violations are rampant.

Among the violation rates reported in 1995 are the following:

- Almost 20 percent of scales were inaccurate.
- One in every five vehicle tank meters, such as heating oil delivery truck meters, delivered the wrong amount of product.
- One-fifth of gasoline dispensers distorted the fuel volume.
- Price scanners overcharged or undercharged consumers five percent of the time.

Massachusetts, by comparison, does not publish similar data, making it impossible to assess the extent of violations in this state.

[4] "Division of Standards Chronology." March 1996. pp 1-3.

Responsibilities of Cities and Towns for Weights and Measures

In communities with more than 5,000 people, Weights and Measures programs are administered locally. The city council, board of selectmen or other governing authority must appoint an individual to serve as the Weights and Measures inspector.

The local inspector tests and seals every measuring device annually and provides an annual report of his or her activities to the Division of Standards. In addition, the local inspector must make sure that the devices are accurate and their usage honest.

In practice, the primary task of local inspectors is to test and seal weighing and measuring devices annually, since merchants cannot legally use them for commerce otherwise. The quality of this testing ranges widely: some inspectors actively learn new test procedures and use updated equipment, while other inspectors use questionable procedures and inappropriate or outmoded test equipment.

Many inspectors lack the equipment and training to effectively do their job, receive little support from their community, and are paid as little as $2,000 annually. As a result, many local Weights and Measures inspectors merely test and seal each device as required by law, but do not engage in the constant and random inspections necessary to effectively enforce the law. In some communities, inspectors never perform net weight testing on store-packaged items, gasoline octane testing, or testing of the accuracy of retail checkout scanners.

An inspector from the Division of Standards can perform any of these tests in any town; however, with only five inspectors they cannot perform their statutory duty to seal devices in small towns, as well as enforce the law throughout the state. Where enforcement is constant and vigilant, devices are usually maintained and operated honestly, and pricing laws are followed. Where enforcement is lax, devices are frequently not maintained or operated properly, and pricing laws are loosely followed.

If a local inspector conducts a store inspection and notices a violation of the item pricing law, that is, an item that is required to be individually priced lacks a tag, the inspector must notify the Division of Standards because it has sole fining authority. Although the current item pricing law grants local inspectors the authority to issue fines, the Division has not authorized them to do so.

In addition, if a local inspector notices any other type of violation of a Weights and Measures law, the inspector must take the merchant to court on criminal charges. Criminal cases are rarely, if ever, initiated because criminal courts are already burdened with more serious crimes such as rape or murder and have overcrowded dockets. This avenue of enforcement is time consuming, and judges are often reluctant to clog the court's time for a series of twenty five cent overcharges.

Currently, there are no standards or requirements regarding who can serve as a

Weights and Measures inspector, in contrast to other local inspectors such as building inspectors, who are certified by the state. With the advent of new weighing and measuring technologies and the proliferation of retail checkout scanners, the absence of professional certification with mandatory training is problematic.

This lack of a training requirement poses several significant problems that can be costly to consumers, merchants and the city or town: consumers do not enjoy the proper enforcement of Weights and Measures laws that can be provided only by a trained inspector; honest merchants are deprived of a level playing field when competitors have undetected violations of Weights and Measures laws; merchants could suffer from a damaged reputation if they are fined by an inspector who uses improper testing procedures in their store; and the city or town could be sued by a merchant if a Weights and Measures inspector uses an improper test procedure in deeming that a store failed to maintain proper scale or scanner accuracy.

Lawsuits are not a theoretical threat. The State of California was sued by Cooks Family Food for applying arbitrary moisture loss allowances when conducting net weight testing of water-added hams. California had to pay $208,000 to settle the lawsuit with the manufacturer.[5] As a result of this lawsuit, California has placed a heavier emphasis on proper training.

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[5] Conversation with Jim Tollefson, Branch Chief of Compliance and Evaluation, Division of Measuring Standards, California Department of Food and Agriculture. December 9, 1996.

III. Benefits of Weights and Measures Regulation and Enforcement

Consumers

On a national level, it is estimated that weights and measures enforcement ensures equity in commercial transactions worth more than $3.36 trillion annually.[6] A 1992 study cited in Supermarket Business magazine estimated that errors by retail checkout scanners cost consumers more than $2.5 billion annually.[7] Weights and Measures officials play a critical role in ensuring that consumers are protected in the marketplace.

Barnstable Battles Consumer Overcharges

The town of Barnstable, which runs one of the most effective Weights and Measures programs in Massachusetts, annually quantifies the dollars saved by its Weights and Measures Program. In 1995, inspections saved consumers $363,000 that would have been lost due to inaccurate weighing and measuring devices. Over $114,000 was saved through net weight inspections of store-packaged items; $108,000 was saved through correction of gasoline station pumps; adjustments to taxi meters and inaccurate scales saved another $72,000; and corrected fuel truck meters added $68,000 to the total savings.

The importance of strict enforcement of Weights and Measures laws is highlighted by the scanning errors detected this year at Osco Drug and Lechmere. Field work conducted earlier this year by the Division of Standards revealed that checkout scanners were registering the wrong price on sale items 35 percent of the time at Lechmere, resulting in consumers being overcharged in most cases.[8] These overcharges frequently occurred on sale items.

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[6] "Weights and Measures Economic Index". National Institute of Standards and Technology, Office of Weights and Measures. February 14, 1996.

[7] Supermarket Business. November 1992.

[8] "State Finds Scan Errors 35% Of Time At Lechmere," The Boston Globe, October 8, 1996.

In addition, the City of Boston's Inspectional Services Department discovered this year that 76 percent of items it purchased at Osco Drug registered incorrect prices when scanned at the checkout counter.[9]

Seattle Slashes Scanner Errors

In 1994, the city of Seattle's Consumer Affairs Unit began a periodic price inspection program for all types of retail stores. At a minimum, all stores with retail checkout scanners are inspected annually for accuracy using the price verification procedure adopted by the National Conference on Weights and Measures.

According to a Federal Trade Commission report, when Seattle's program was introduced, the overall pricing error rate among stores inspected was 6.7 percent: now, the overall pricing error rate has dropped to 3.7 percent. Of greatest importance to consumers, overcharges have declined from 4 percent in 1994 to 1 percent in 1996, a 75 percent reduction in errors against the consumer.

Merchants

Weights and Measures enforcement is critically important to the honest merchant. The primary objective of any Weights and Measures program, according to Dr. Carroll S. Brickenkamp, the former Chief of the Office of Weights and Measures at the National Institute of Standards and Technology, is the following:

> "...(Weights and Measures enforcement actions) ensure that fairness and equity prevail in all commercial transactions involving determinations of quantity. Weights and Measures is indeed a police function. If businesses are forced to compete with those who would adjust measuring devices to read slightly in their favor, or those who 'forget' to deduct for the weight of packaging material when computing the total price based on a price per pound, then they are not being provided the 'level playing field' we have been asked to assure them as government representatives."[10]

Weights and Measures enforcement is important to merchants for three primary reasons:

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[9] "State Says Osco Drug Violating Label Law," The Boston Globe. June 25, 1996.

[10] Letter from Dr. Carroll S. Brickenkamp, former Chief, Office of Weights and Measures, National Institute of Standards and Technology to Dr. C. Alan Pettibone, Director, Washington State Department of Agriculture. November 29, 1991. Pages 1-2.

- Weight and Measures officials provide a level playing field for merchants. A merchant needs to know that a competitor is held to the same standards of accuracy and honesty.

- Many retailers operate on small profit margins. According to Dr. Brickenkamp, "When businesses operate on small profit margins, such as supermarkets do, for example, even very slight inequities between businesses because of the lack of government oversight can have disastrous consequences. The honest business is either driven out of business or forced to cut corners to remain competitive."[11]

- Inaccurate scanners can result in stores unfairly losing customer traffic. Stores with inaccurate scanners potentially receive an extra profit because of scanner errors, which often occur on sale items, while other stores lose out on customer traffic as a result of lower advertised prices promised but not delivered by competitors.

Pennsylvania Food Industry Promotes Accuracy

The Pennsylvania Food Merchants Association (PFMA), which represents food retailers, organized an industry "Scanner Certification Program" in 1991. The Scanner Certification Program provides recognition for food stores that have established and met standards of accuracy in the administration of their pricing and scanning programs.

In order to gain certification by PFMA, stores must continually maintain over a 98 percent accuracy rate at checkout, give consumers items for free when they have been overcharged, and meet other training and pricing requirements. Over 230 food stores are currently certified by the PFMA, and scanner accuracy rates at participating stores have improved from 96.9 percent to 98.55 percent.

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[11] "State Says Osco Drug Violating Label Law," The Boston Globe. June 25, 1996.

IV. Findings and Recommendations

A. Consumer Protection Initiatives

Finding: **Scanner inaccuracy is a serious problem for consumers and merchants.**

A recent investigation by the state's Division of Standards detected that checkout scanners at Lechmere registered the wrong price on sale items 35 percent of the time; another investigation by the City of Boston's Inspectional Services Department found that 76 percent of items purchased at Osco Drug scanned incorrectly. These two examples highlight the serious problems that retailers can have with scanner accuracy and why vigilant law enforcement is necessary.

A 1996 study by the Federal Trade Commission revealed that although nationally the error rate for scanners was 4.82 percent, Massachusetts was the worst of the seven states studied with an error rate of 7.51 percent. Using the 98 percent standard for price accuracy adopted jointly by government and industry through the National Conference on Weights and Measures, just 45 percent of all stores nationally would meet the mark; with 51 percent of food stores reaching 98 percent accuracy; 35 percent of home stores; and 31 percent of department stores.[12]

Recommendation: **An annual scanner accuracy test should be required in addition to maintaining the annual testing requirement for all other weighing and measuring devices.**

All stores in Massachusetts with scanners should undergo an annual scanner accuracy test. Current law mandates annual testing of other measuring devices such as scales and gas pumps, but does not require an annual test for checkout scanners. Seattle figures demonstrate that regular testing of scanners reduces error rates and saves consumers' money. After initiating a formal checkout scanner enforcement initiative, error rates in Seattle plummeted by 75 percent, and consumers hard-earned dollars were protected.

Finding: **Consumers lack a viable remedy when they are overcharged by an inaccurate scanner.**

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[12] "Presentation on Accuracy of Checkout Scanners." Elaine Kolish, Associate Director, Division of Enforcement, Federal Trade Commission. November, 18, 1996.

Recommendation: **A Consumer Bounty program should be set up that provides financial redress to consumers if they are overcharged by an inaccurate scanner.**

A consumer should be entitled to damages from the seller of ten times the difference in price, with a minimum recovery of $1.00 and a maximum of $5.00 per item. The consumer would receive this redress in the store. If the seller refuses to pay the damages, the consumer should be empowered to initiate a court action to recover damages of $250.00 per violation, plus attorney's fees not to exceed $300.00 per action.

Massachusetts food retailers that choose to voluntarily comply with the current price accuracy guarantee program should be exempted from the proposed Consumer Bounty initiative. The price accuracy guarantee program reduces item pricing fines for food retailers that offer an item free when consumers are overcharged.

Bounty Hunters Mobilize in Michigan

According to the Federal Trade Commission's "Report on the Accuracy of Checkout Scanners," Michigan adopted a consumer bounty law that requires retailers to pay consumers who are overcharged ten times the difference in price, with a minimum recovery of $1.00 and a maximum recovery of $5.00. The Michigan Attorney General's office has distributed over 100,000 consumer bill of rights handouts on bounties. It is the most popular consumer program that the Attorney General administers.

Finding: **Under the current Weights and Measures system, consumers have no way of gathering information on the accuracy of an individual store's scanners.**

Recommendation: **The Division of Standards should compile and publish an annual listing of the state's twenty worst performers for scanner accuracy.**

Finding: **Consumers need better access to information concerning their rights and who to contact if they want to file a complaint.**

Recommendation: **Retail stores should make a concerted effort to provide information to consumers on whom to contact if they have been victims of overcharging or other Weights and Measure violations.**

Options for information dispersal include putting consumer complaint information on the back of receipts, posting contact information in a conspicuous store location, and including the consumer information on store circulars.

Finding: **Industry-led price verification programs have resulted in improved scanner accuracy in other states.**

Recommendation: **All components of the retail industry should take the initiative to improve their scanner accuracy through the adoption of a self-monitoring price verification program.**

All industry groups in Massachusetts that use scanners, including food stores, drug stores, department stores, home stores and discount stores, should work to develop a voluntary program to improve scanner accuracy such as the one developed by the Pennsylvania Food Merchants Association. Such a program includes extensive training and self-testing, and has enabled participating stores in Pennsylvania to reach 98.6 percent accuracy,[13] exceeding the National Conference of Weights and Measures' 98 percent goal.

B. Uniform Enforcement and Streamlined Operations

Finding: **Many towns which fall between 5,000 and 20,000 residents employ part-time Weights and Measures inspectors.**

Many part-time inspectors lack the equipment and training to effectively do their job, receive little support from their community, and are paid a nominal salary. As a result, both consumers and merchants are hurt because Weights and Measures laws are not enforced uniformly across the state.

Recommendation: **Communities with populations between 5,000 and 20,000 people should be given the option of keeping their current Weights and Measures program in place provided their inspectors are certified under new licensing guidelines.**

Alternatively, these communities should have the option of purchasing services from the state's Division of Standards to operate their Weights and Measures program. The Division should develop a formula based on the number of devices in a community

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[13] "Scanning Accuracy Presentation" Randy St. John. Pennsylvania Food Merchants Association. November 18, 1996.

whereby the community pays a fair rate for these services.

Finding: **The level of competence of Weights and Measures inspectors varies greatly from community to community. This undermines a fair marketplace for consumers and merchants.**

There are currently no requirements for licensing as a Weights and Measures inspector, nor are there any requirements for continuing professional education. Certain communities have very capable inspectors, but many other communities employ inspectors who lack the necessary training, equipment, community support and salary to both seal devices and effectively enforce other Weights and Measures laws.

It is critical that inspectors receive proper training in order to protect consumers and merchants. In addition, local communities or the state could be sued by merchants if improper testing methods are used in finding fault with a merchant.

Recommendation: **Weights and Measures inspectors should be required to pass a licensing test administered by the Division of Standards. Annual continuing education courses should be required to maintain a license as an inspector.**

These requirements would be similar to those which now exist for building inspectors. Training programs, developed by the Division of Standards, should be offered to all Weights and Measures inspectors to enable them to obtain annual continuing education credits that would be required under the new licensing guidelines.

Finding: **The enforcement of Weights and Measures laws is severely hindered because the majority of violations of the law must be heard in criminal court.**

The criminal courts are overwhelmed with serious crimes, and therefore judges are often understandably reluctant to clog the court's time hearing a trial for a series of twenty-five cent overcharges. In addition, Weights and Measures enforcement is hampered because there is little incentive to pursue court action to recoup minor fines, such as $10.00 per unit pricing violation. As a result, few cases go to court and violators face few consequences.

Recommendation: **Administrative civil fines should be used for all types of violations as opposed to criminal court proceedings.**

"This will strengthen the effectiveness of all jurisdictions and provide a very strong tool

to encourage compliance with all weights and measures laws, rules and regulations."[14] Higher fines should be instituted, especially for repeat offenders. As with all administrative actions, aggrieved parties should be able to appeal fines through the courts.

Finding: **The equipment costs of operating an effective Weights and Measures program are substantial and do not vary based on the size of the community. A lack of proper testing equipment undermines a fair marketplace for consumers and merchants.**

To properly test a gas station or an oil truck, it is necessary to have expensive equipment in order to carry out the job. Most communities allocate little in their tight budgets to Weights and Measures equipment.

Recommendation: **A regional approach would enable all communities to share in the purchase and maintenance of equipment necessary to ensure fairness in the marketplace.**

Towns that spend modest amounts on their Weights and Measures programs would be better served if their resources were pooled with other small towns, since significant economies of scale operate in this field, especially in the purchase or rental of equipment. The Division of Standards should develop a model plan for regionalism which would unite the activities of several communities who lack the resources to ensure equity in the marketplace. Communities that join together should be eligible for grant money for equipment from the Consumer and Merchant Protection Trust Fund (see Section C of these recommendations).

Finding: **Local Weights and Measures officials are not authorized to conduct item pricing inspections.**

While local officials are responsible for testing and sealing devices and can perform net weight testing, they cannot issue item pricing fines ("parking ticket" fines) because the Division of Standards has not permitted them to do so, even though a statute authorized the Division to delegate that authority to local inspectors in 1986. In addition, neither state nor local inspectors are authorized to issue unit pricing fines. As a result, many communities that maintain their own Weights and Measures operations lack adequate enforcement of item and unit pricing laws.

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[14] Letter from Charles Carroll, Assistant Director of the Massachusetts Division of Standards. October 15, 1996. Page 2.

Recommendation: **The statute should be changed to grant local officials the direct authority to conduct item pricing inspections and issue "parking ticket" item pricing fines. In addition, statutory authority should be extended to local officials to conduct unit pricing inspections, and both state and local inspectors should be authorized to issue "parking ticket" unit pricing fines.**

Additional enforcement capabilities at the local level would relieve the Division of Standards of a portion of its enforcement burden. In addition, it would ensure greater compliance with the item and unit pricing laws.

Finding: **Weights and Measures record keeping needs improvement in many communities, with legally required annual reports not filed by more than one-third of communities with more than 5,000 people.**

Even among communities that do file reports, many file reports that are incomplete. The reporting format is outdated and provides data of little value. However, select communities provide a model approach to record keeping. These communities not only keep track of all inspections and enforcement activities, but also quantify the savings to consumers as a result of their actions. Improved record keeping will allow municipalities and the state legislature to assess the performance of local and state Weights and Measures enforcement programs. This information will be crucial in determining the resources that should be put toward these programs in the future.

Recommendation: **The Division of Standards should revise the annual reporting requirements for each community that operates its own Weights and Measures program in order to determine how effectively that jurisdiction is maintaining an enforcement program.**

The Division should also file an annual report with the Legislature detailing expenditures from the Consumer and Merchant Protection Trust Fund (see Section C of these recommendations).

Local annual reporting requirements. The revised annual report should reflect the components of a modern enforcement program, as determined by the Division of Standards, but should also include a quantification of savings to consumers. Communities that fail to file adequate and complete reports should be ineligible to receive any revenues from the Consumer and Merchant Protection Trust Fund, including any portion of the fines collected in their jurisdiction.

Division of Standards reporting requirements. The Division of Standards should submit an annual report of its activities to the Governor, Legislature, State Auditor, and Inspector General. This report should include a summary of local activities throughout the state and an accounting of funds collected and spent by the

Consumer and Merchant Protection Trust Fund. In addition, the Division should revise its annual report to include violation rates by category of device, quantification of savings to consumers, and scanner accuracy rates by retail sector.

C. Resources

Finding: **There is a lack of adequate and self-generated funding for an effective and comprehensive Weights and Measures program in Massachusetts.**

The Division of Standards has seen a reduction in its budget from $726,000 in Fiscal Year 1987 to $462,000 in Fiscal Year 1996, and a reduction in inspectors from 14 to 5. In addition, many local programs lack the funding to properly enforce the law.

Recommendation: **Increase the resources available for Weights and Measures activities through the establishment of a "Consumer and Merchant Protection Trust Fund."**

Trust Fund Revenue Sources:

- **Sealing Fees.** A sealing fee should be collected for every inspection done by both local and state inspectors, not just those done by local inspectors. The current absence of a sealing fee in towns under state control is unfair to merchants in larger towns who must pay a fee. Fees collected by local inspectors should remain under local control. The Division of Standards tested and sealed 2,836 devices in 1995 in towns with less than 5,000 people. If it collected fees comparable to that currently charged in many jurisdictions, this would provide the Division with significant additional resources to expand and enhance enforcement.

- **Local item and unit pricing fines.** Local Weights and Measures officials should be allowed to issue fines, determined by the state's Division of Standards, with the revenue split evenly between the Division and the local community.

- **Fines for improper use of devices.** Fines should be levied upon device owners who either fail to maintain their devices properly or who misuse them. Devices which exceed accepted standards of accuracy should be subject to a fine established by the Division.

- **Purchase of contracted services by communities with populations between 5,000 and 20,000.** Communities which opt to have the Division of Standards provide them with Weights and Measures services would pay into the Trust Fund.

Trust Fund Expenditures - How Increased Revenues Should Be Expended:

- **Enforcement of Weights and Measures at the state level.** Increased funding would enable more inspectors to be hired in order to raise the frequency of inspections and to accommodate new communities which contract for services from the state.

- **Equipment purchases at the state level.** Funds would allow the state to purchase sufficient equipment to effectively enforce Weights and Measures laws and to provide a pool of equipment which can be rented to local communities.

- **Grants to local communities.** Grants should be available for communities that choose to regionalize using a model regionalization plan developed by the Division of Standards. Also, the Trust Fund should finance a competitive grant program that would seek to reward communities that propose innovative Weights and Measures initiatives.

- **Training of state and local inspectors.** The Trust Fund should provide the funds necessary to ensure that constant, state-of-the-art training is available.

Conclusion

This report documents that the existing Weights and Measures enforcement system in Massachusetts suffers from a variety of serious shortcomings. However, model programs exist within Massachusetts and in other states which offer effective solutions to these problems. The Senate Committee on Post Audit and Oversight has incorporated many of these ideas into a realistic program of action that will better protect consumers and merchants in the Commonwealth.

While many of the recommendations contained in this report are administrative in nature, the Committee will be drafting legislation to implement those recommendations that require legislative action. Any questions or comments in regards to this report can be directed to the Senate Committee on Post Audit and Oversight, State House, Room 312-B, Boston, MA 02133.